IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.4709 OF 1999

The Associated Cement Companies Ltd.)
A company, duly registered under)
the Companies Act, 1956 having its)
Cement House, Maharshi Karve Road,)
Marine Lines, Mumbai 400 002 and)
CRS Complex at L.B.S.Marg,)
Thane 400 604.).. Petitioner

Vs.

1. The Transport Commissioner,)
Maharashtra State, having his)
office at 3rd and 4th Floor,)
Administrative Building,)
Near Dr.Ambedkar Garden,)
Government Colony, Bandra (E),)
Mumbai 400 051.)

2. The Regional Transport Officer)
Thane Region, Thane.)

3. The Regional Transport Officer)
Mumbai (C), Old Bodyguard Lines)
Tulsiwadi, Tardeo,)
Mumbai 400 034.)

4. The State of Maharashtra.).. Respondents

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Ms Pritam Tendulkar with Shri M.S.Karnik for the petitioner.

Ms P.S.Cardozo, AGP for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &

NARESH H.PATIL, JJ

DATED : 18TH AUGUST, 2006

ORAL JUDGMENT : (Per N.H.PATIL, J)

1. This petition is directed against the impugned order passed by Respondent No.1 - The Transport Commissioner, Maharashtra State, dated 23rd June, 1999 as well as the Notices of Demand dated 15th July, 1999. The petitioner is a company duly registered under the Companies Act, 1956. It runs a factory and CRS Complex at Lal Bahadur Shastri Marg, Thane. Respondent No.1 is a Transport Commissioner and Respondent Nos.2 and 3 are the Regional Transport Officers.

2. The petitioner contends that the petitioner company purchased 7 Concrete Mixer Vehicles bearing following registration numbers.

"**Registration No.**

MH 04 B-8038

MH 04 B-8039

MH 04 B-8040

MH 04 B-8041

MH 04 B-8042

MH 04 B-8067

MH 04 B-8089"

The said concrete mixer vehicles were purchased in the year 1993 and were duly registered with Respondent No.2 in the year 1993 itself in the non-transport category. Respondent No.2 levied taxes on the said vehicles under the provisions of the Bombay Motor Vehicles Tax Act, 1958. The petitioner contends that the company operates the said mixer vehicles at Bandra Kurla Complex in Bombay for construction of Bharat Diamond Bource Project. According to the petitioner, the said mixer vehicles were used for making and transporting ready mixed concrete from the site owned by the petitioner company to Bharat Diamond Bource Site. Sometime in the month of July, 1996, the officers of Regional Transport Office, Tardeo, checked the said mixers and issued checking reports mentioning therein that the said non transport vehicles were detected carrying cement mixed material from the plant to the construction site. According to the petitioner company, it was under impression that the said vehicles were registered in non transport category as the said vehicles were used as mixers for mixing R.C.C. and for transportation of the same to the concerned site. On account of objection raised by the authorities of the Regional Transport Office, the

officers of the petitioner company approached the Respondent No.2 and requested him to verify whether the registration of the said vehicles in the non-transport category was correct. The authorities of the Regional Transport Office confirmed the registration of those vehicles under non-transport category. The vehicles were detained by the RTO authorities and the Tax Books were also seized.

3. The petitioner company thereafter filed an application dated 27th July, 1996 to the Respondent No.2 requesting him to convert the registration of the said vehicles from non-transport to transport category with immediate effect. Accordingly, the respondent No.2 converted the said vehicles into transport category. After conversion of the registration, the Respondent No.2 recovered from the petitioner company the difference in the quantum of tax payable on the said 7 vehicles from the date of registration till the date of conversion of the said vehicles into transport category. The details of difference amount recovered by the registering authorities are as follows:-

"Vehicle No.	**Amount**
MH 04 B-8038	28,963/-

MH 04 B-8039	28,931/-
MH 04 B-8040	28,931/-
MH 04 B-8041	28,931/-
MH 04 B-8042	28,931/-
MH 04 B-8067	14,242/-
MH 04 B-8089	3,372/-"

4. The Respondent No.2 thereafter insisted for payment of interest for the difference as per Section 8A of the Bombay Motor Vehicles Tax Act, 1958, hereinafter referred to as "the Act of 1958." The petitioner company requested Respondent No.2 to waive amount towards interest. However, the said request was not accepted by Respondent No.2. The petitioner company was called upon to pay interest at the rate of 2% on the amount of difference paid by the petitioner. The amount of interest which was sought to be recovered by Respondent No.2, according to the petitioner, is as under:-

"Vehicle Number	**Interest**
MH 04 H-4415	30,710/-
MH 04-H-4414	30,710/-
MH 04 H-4420	30,710/-
MH 04 H-4418	31,104/-

MH 04 H-4416	30,710/-
MH 04 H-4421	8,586/-"

5. The learned counsel appearing for the petitioner has placed reliance on Section 44 of the Motor Vehicles Act, 1988 to support the contention that it is the registering authority which shall determine, under which category the motor is to be registered after the same is produced before the concerned authority. The petitioner company was using the vehicles for transport purposes. According to the learned counsel, the said vehicles were wrongly registered in the category of non transport vehicles. Nothing is placed on record of this Court to support the contention of the petitioner that the petitioner company had placed before the registering authority the necessary materials and details for the purpose of registration of the said vehicles under the Transport Vehicles Category.

6. Perusal of the provisions of Section 44 of the said Act of 1988 shows that before registering a vehicle, the authority concerned has to satisfy itself with the particulars contained in the application made by the applicant seeking registration of vehicles and after the authority is satisfied regarding compliance

of the requirements under the Act, the vehicles are registered.

7. The learned counsel further contended that the petitioner was under bonafide belief that the vehicles would be registered under transport category, and it was a mistake on the part of the Respondent No.2 to register those vehicles as Non-transport Vehicles. We do not find any material on record to support the submissions of the learned advocate for the petitioner to that effect. It was further submitted that the petitioner had made a request to the registering authority that the vehicles be registered in the appropriate category. If this is the case, then we do not find fault with the registering authority who after having gone through the application of the petitioner decided to register the said vehicles as Non-transport Vehicles. It is clear that the petitioner did not seek registration of the vehicles in transport category. Therefore, it would not be permissible for the petitioner to shift burden on the registering authority who, according to the petitioner, ought to have registered the said vehicles in transport category.

8. In exercise of powers under the provisions of

Section 8A of the Act of 1958, the concerned authority directed the petitioner to pay interest at the rate of 2%. Considering the provisions of the Act of 1958 and the Motor Vehicles Act, 1988, more particularly in the backdrop of the facts of this case and the stand taken by the petitioner company, we do not find that the impugned order and the demand notices require interference in exercise of writ jurisdiction of this Court under Article 226 of the Constitution of India. The provisions of Section 8A of the Act of 1958 casts an obligation on the registering authority to levy interest on the amount of tax which is due. Certainly the transport commissioner had powers to remit the whole or any part of the interests payable under Section 8A of the Act of 1958 in respect of the specific period. But the commissioner did not exercise the said power to remit the amount of interest which, in the facts of the present case, we do not find to be unreasonable or erroneous view of the matter.

9. For the reasons stated above, the petition fails and is accordingly dismissed. The interim reliefs granted earlier stand vacated. The rule discharged with costs to be paid by the petitioner.

(R.M.S.KHANDEPARKAR, J)

(NARESH H.PATIL, J)